REMARKS/ARGUMENTS

Status of the Claims

Claims 1-55 are currently pending in the application. Claims 1, 15, 27, 43, and 49 have been amended. No claims have been added or cancelled. Therefore, claims 1-55 are present for examination. Claims 1, 15, 27, 43, and 49 are independent claims.

Prior to entry of this amendment, the application included claims 1-55. A Final Office Action mailed September 26, 2008 has rejected claims 1-55 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,816,878 B1 to Zimmers et al. ("**Zimmers**") in view of U.S. Patent No. 7,233,781 B2 to Hunter et al. ("**Hunter**").

Claim Rejections Under 35 U.S.C. 103

Claims 1-55 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zimmers in view of Hunter. Applicants respectfully request reconsideration of the rejection because either the Examiner has failed to show a *prima facie* case of anticipation or the amendments overcome the rejection. To establish a *prima facie* case of obviousness, all claim limitations must first be taught or suggested by the prior art. *See, e.g., DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1360 (Fed. Cir. 2006). The Examiner must then provide an explicit analysis supporting the rejection. *See KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) ("a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art"). While the Examiner can choose one of several exemplary rationales from the MPEP to support an obviousness rejection under *KSR*, all the rationales still require the Examiner to demonstrate that all the claim elements are shown in the prior art. *See* MPEP § 2143, Original Eighth Edition, August 2001, Latest Revision July 2008. The combination of Zimmers and Hunter do not show all the claim elements.

Claim 15:

Missing Limitation: "wherein the alert gateway is located at a subscriber location and is in communication with subscriber equipment, wherein the alert gateway is in communication with two or more subscribers, and wherein the alert gateway is in communication with two or more types of subscriber equipment"

Claim 15 requires "wherein the alert gateway is located at a subscriber location and is in communication with subscriber equipment, wherein the alert gateway is in communication with two or more subscribers, and wherein the alert gateway is in communication with two or more types of subscriber equipment." The Examiner has stated, in rejecting claim 15, that "Zimmers does not explicitly teach wherein the alert gateway is located at a subscriber location and is in communication with the subscriber equipment." *Office Action*, p. 6 (emphasis in the original). Instead, the Examiner relies on Hunter to show this limitation.

The Examiner has pointed to the Emergency Feedback and Notification (EFAN) Device 110 as being equivalent to the alert gateway. *See Office Action*. p. 7. The Examiner cited Hunter to show that the alert gateway is located at a residence. *See Office Action*. p. 7. The pertinent section cited is as follows:

> FIG. 2 illustrates a general schematic of the EFAN system 100 according to a second embodiment of the invention. As shown in FIG. 2, a plurality of EFAN devices 110 provided at selected locations such as residential homes 102, office buildings 104, stores, etc., are equipped with at least one sensor for detecting at least one environmental measurement and, more preferably, equipped with an array of sensors for detecting a plurality of environmental measurements. Such measurements may include temperature (e.g., either high or low extremes), radiation (e.g., neutron and high energy nuclear particles), toxic chemicals and gases (e.g., industrial chemicals and military gases such as Sarin), biohazards, gases (e.g., carbon monoxide, methane, propane or natural gas), smoke, water and air quality, humidity, shock (from a blast, a tornado, or earthquake) and pressure. Many of the sensors necessary to detect these parameters are known in the art and are preferably included in the device, on the device, or external to the device, for instance mounted to a wall, ceiling, or in the plenum of a heating, ventilation and air conditioning system, at an appropriate place, and communicate with the EFAN device by a wired or wireless link. The sensors in the device are preferably part of an air intake and sampling system having an array of sensors in direct contact

> with an airflow stream inside the device or within an intake tube driven by a small fan. In a preferred embodiment, the EFAN devices 110 are capable of gathering local conditions at a site with sensors that measure, for example, temperature (fire), acceleration (explosion), radiation or other toxic gases and, are enabled to transmit the data to remote locations by data communication links 115 such as cable, telephone, satellite, RF transmission and cellular communication systems. Preferably, EFAN Devices 110 process this information for factors such as magnitude or rate of change, and convey this information via links 115 to a Host Facility 120 when thresholds are reached or when instructed to communicate data by the Host Facility. Host facilities are depicted in FIG. 2 as the local 120 EFAN data collection and processing facilities where the data is processed in the manner as will be explained.
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> As will be explained in greater detail herein, the *EFAN device 110 is preferably an interactive television set-top box that receives cable and/or satellite transmissions*, or resides in televisions or vehicles. In the description of certain preferred embodiments herein, the terms "set-top box" and "interactive set-top box" are used to refer to the preferred form of these EFAN devices. *In other embodiments, the EFAN device 110 may be incorporated in a personal computer, a cellular phone, personal data accessory (PDA), or a radio.* The EFAN device may be fixed in a structure such as a residence, commercial building or in a mobile vehicle, such as an automobile, boat, or airplane. *Hunter*, col. 13, lines 1-51 (*emphasis added*).

The EFAN device is not an alert gateway. The EFAN device is the system that actually warns a subscriber of an event by providing an alert warning. Another section cited by the Examiner proves this fact:

> More specifically, central blanket broadcasting to units in houses may further be accomplished by satellite (DBS) 109, cable, TV, radio or any element of the emergency broadcast network 10 of FIG. 1. Headers provided on messages and filters in EFAN Devices 110 restrict display of messages to appropriate clients. Back-channels (POTS or cell phone) 115 permit responses or sensor information from selected houses to be communicated back to a "host facility" which may include local 120, regional 130 or national 140 EFAN sites. Each host facility is a central data compilation and processing station programmed to monitor data trends and assess emergency situations. Responses to emergency or general messages are sent by the appropriate central stations to a blanket cable or broadcasting system 109 via an uplink facility 105 for DBS. As is understood, the system 100 also functions with conventional cable broadcasting with emergency notification information delivered to the cable head end (not shown). Messages

> 108 to be communicated to individuals or groups of households 102 via blanket broadcasting system 109 are transmitted along with a description of the intended households. Messages 108 may be information for immediate communication, information to be stored by an EFAN Device 110 for later display or, control signals that instruct the set-top box unit when or under what conditions it should communicate via the back channels 115 with host facilities 120. Filter devices provided in each household set-top box receiver allow selection of messages only intended for specific households at specific locations (e.g., eastern Virginia) or, specific households based on profiles (e.g., National Guardsmen, doctors, elderly) that receive messages with headers that match their filters. Messages may also be encoded by encoding device 155 to prevent unauthorized persons from receiving a particular message. Each header and message is sent in digital form to a satellite uplink facility 105 (or to other selected blanket broadcasting systems such as the NWR (National Weather Radio) or radio stations) and are blanket broadcast by that broadcasting facility 109 to all EFAN Devices 110. *Each Device 110 communicates appropriate messages to members of the household, e.g., by the household's television.*
>
> As information is collected at host facilities 120, 130 and 140, operators, or automatic analysis systems provided at the central data compilation and processing station, analyze trends and coordinate with local emergency services, e.g., a fire company, or pass this information to regional centers or, pass additional messages to the units within their area either by high or low bandwidth channels in accordance with the techniques of the emergency notification content delivery system of the invention described herein with respect to FIG. 1. *Hunter*, col. 13, line 52 – col. 14, line 34 (*emphasis added*).

Claim 15 has been amended to show that the alert gateway can communicate with two or more subscribers over two or more types of subscriber equipment. The EFAN device communicates only on one type of subscriber equipment (i.e., the subscriber equipment the EFAN is attached to) and only to one subscriber. The system of Hunter, like Zimmers, broadcasts messages from a central broadcasting system to several EFAN devices that alert single subscribers. However, Hunter, again like Zimmers, does not send alerts to alert gateways that then can warn two or more subscribers. Thus, claim 15 provides a distributed alert system that is different from Zimmers or Hunter. For at least this reaons, claim 15 is allowable over the cited art.

Motivation to Combine:

The Supreme Court in *KSR* specifically stated that obviousness is shown only if "the subject matter *as a whole* would have been obvious at the time the invention was made." *KSR*, 127 S. Ct. at 1734 (*emphasis added*). In other words, the Examiner must provide a motivation to combine all references together. Applicants believe that it is improper to combine Zimmers with Hunter. Zimmers teaches a centrally controlled broadcast system that delivers alerts directly to subscribers. "Alerts generated using web server 114 or IVR server 116 are delivered to database query system 112 through packets which are also formatted in accordance with Table 1. Database query system 112 then identifies subscribers to be individually alerted, and then alert notifications are delivered to subscribers, via telephone, via facsimile, via electronic mail or via other electronic communications." *Zimmers*, col. 11, lines 27-34. Hunter is a similar system. Indeed, the Examiner agrees with this assessment. *See Office Action*, p. 7 ("Zimmers teaches that the alert gateway is located at a central facility and distributes alerts to seleted user locations . . .").

Hunter uses a central broadcast to EFAN devices. "Each header and message is sent in digital form to a satellite uplink facility 105 (or to other selected blanket broadcasting systems such as the NWR (National Weather Radio) or radio stations) and are blanket broadcast by that broadcasting facility 109 to all EFAN Devices 110." *Hunter*, col. 14, lines 18-22. Examiner suggests that "Hunter teaches distributing targeted alerts to a selected group of subscribers." *Office Action*, p. 7. Applicants disagree with the Examiner;s assertion that Hunter teaches a distributed warning system, and Hunter clearly teaches something different as shown above. Regardless, Examiner argues that one of ordinary skill would have been modified to change the central distribution system of Zimmers into a distributed system "as taught by Hunter." *See Office Action*, p. 7. However, this suggestion is contrary to established law.

To combine references, any changes to the systems or methods described in the systems must not make the references unsatisfactory for its intended purpose. "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." M.P.E.P.

§ 2143.01 (*citing In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)). Modifying Zimmers from a central distribution system to a distributed system is contrary to the stated purpose of Zimmers – "A system for providing alert notifications *to multiple persons* . . ." *Zimmers*, Abstract. As such, the Examiner motivation is improper.

Further, to combine references, the changes to the references cannot change the principle operation of the prior art invention. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." M.P.E.P. § 2143.01 (*citing In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Here, the function of Zimmers is to broadcast alerts directly to subscribers. *See Zimmers*, Abstract. To change Zimmers into a distributed warning system would require a complete redesign of Zimmers and would defeat Zimmers principle operation – centrally controlled broadcast to subscribers. Thus, the Examiner's motivation is also improper for this reason.

For at least these reasons, claim 15 is allowable over the cited art.

Claims 16-26:

Claims 16-26 depend, either directly or indirectly, from allowable independent claim 15. Thus, claims 16-26 are allowable over the cited art due, at least in part, to this dependence on an allowable independent claim.

Claim 1:

As the Examiner recognizes (*see Office Action*, p. 13), claim 1 includes elements similar to or the same as claim 15. Therefore, claim 1 is allowable over the cited art for reasons similar to or the same as claim 15.

Claims 2-14:

Claims 2-14 depend, either directly or indirectly, from allowable independent claim 1. Thus, claims 2-14 are allowable over the cited art due, at least in part, to this dependence on an allowable independent claim.

Claim 27:

As the Examiner recognizes (*see Office Action*, p. 16), claim 27 includes elements similar to or the same as claim 15. Therefore, claim 27 is allowable over the cited art for reasons similar to or the same as claim 15.

Claims 28-42:

Claims 28-42 depend, either directly or indirectly, from allowable independent claim 27. Thus, claims 28-42 are allowable over the cited art due, at least in part, to this dependence on an allowable independent claim.

Claim 43:

As the Examiner recognizes (*see Office Action*, p. 19), claim 43 includes elements similar to or the same as claim 15. Therefore, claim 43 is allowable over the cited art for reasons similar to or the same as claim 15.

Claims 44-55:

Claims 44-55 depend, either directly or indirectly, from allowable independent claim 43. Thus, claims 44-55 are allowable over the cited art due, at least in part, to this dependence on an allowable independent claim.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested. Applicants do not acquiesce to any argument not specifically addressed herein. Rather, Applicants believe all objections and rejections are overcome by the amendments and arguments presented herein.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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